

# IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 98-**9108**

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**APPROVAL OF A REFERENDUM OF THE STATE BAR OF TEXAS MEMBERSHIP  
REGARDING PROPOSED AMENDMENTS TO RULES 1.04, 7.06 AND 7.07  
OF THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT**

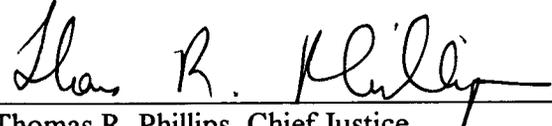
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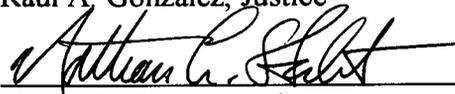
**ORDERED:**

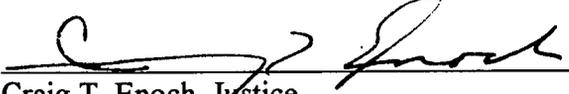
Pursuant to Tex. Gov. Code Ann. §81.024 (Vernon Supp. 1997) the Supreme Court of Texas approves a referendum of the Membership of the State Bar of Texas on the following:

Proposed Amendments to Rules 1.04, 7.06, and 7.07 of the Texas Disciplinary Rules of Professional Conduct.

SIGNED AND ENTERED THIS 1<sup>st</sup> day of July, 1998.

  
Thomas R. Phillips, Chief Justice

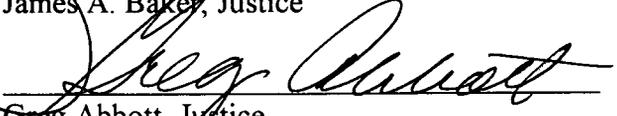
Raul A. Gonzalez, Justice  
  
Nathan L. Hecht, Justice

  
Craig T. Enoch, Justice

  
Rose Spector, Justice

  
Priscilla R. Owen, Justice

  
James A. Baker, Justice

  
Greg Abbott, Justice

  
Deborah G. Hankinson, Justice

IN THE SUPREME COURT OF TEXAS  
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PETITION TO AMEND THE TEXAS DISCIPLINARY RULES  
OF PROFESSIONAL CONDUCT

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TO THE HONORABLE CHIEF JUSTICE AND JUSTICES OF SAID COURT:

The State Bar of Texas hereby respectfully petitions the Court to amend Rules 1.04, 7.06, and 7.07 of the Texas Disciplinary Rules of Professional Conduct. In support hereof, the Petitioner states as follows:

I.

The Board of Directors of the State Bar of Texas, at its meeting on January 16, 1998, resolved by a majority vote to make the recommendation and request for the referendum made herein.

II.

The Petitioner recommends and requests that a referendum ballot be submitted to the membership of the State Bar of Texas on questions of amending Rules 1.04, 7.06, and 7.07 of the Texas Disciplinary Rules of Professional Conduct. The changes to the Rules are set forth in Exhibit "A".

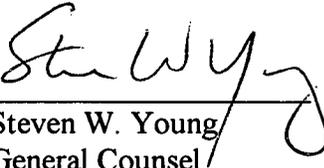
III.

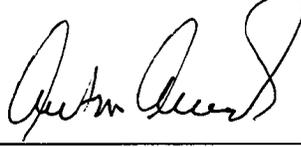
WHEREFORE, the State Bar of Texas Board of Directors requests that the Supreme Court of Texas approve, adopt, and promulgate such amendments and send such amendments to

the membership of the State Bar of Texas for a referendum.

Attest:

Respectfully submitted,

  
\_\_\_\_\_  
Steven W. Young  
General Counsel

  
\_\_\_\_\_  
Antonio Alvarado  
Executive Director

(a) A lawyer shall not enter into an arrangement for, charge, seek to collect, or collect an illegal, fee or unconscionable, fee or unauthorized fee. A fee is illegal if prohibited by law. A fee is unconscionable if a competent lawyer could not form a reasonable belief that the fee is reasonable. A fee is unauthorized if prohibited by paragraph (f) of this Rule.

(b) Factors that may be considered in determining the reasonableness of a fee include, but not to the exclusion of other relevant factors, the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

(c) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

(d) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (e) (f) or other by law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined. If there is to be a differentiation in the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, the percentage for each shall be stated. The agreement shall state the litigation and other expenses to be deducted from the recovery, and

whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement describing the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

~~(e) A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee for representing a defendant in a criminal case.~~

~~(f) A division, payment, or agreement for division or payment of a fee between lawyers who are not in the same firm shall not be made unless it:~~

~~(1) (i) the division is made:~~

~~(i) (A) in proportion to the professional services performed by each lawyer;~~

~~(ii) (B) made with a forwarding lawyer, provided that lawyer did not engage in conduct prohibited by Rules 7.01-7.06 in procuring the forwarded matter; or~~

~~(iii) (C) made, by written agreement with the client, with a lawyer who assumes joint responsibility for the representation;~~

~~(2) (ii) the client is advised of, and does not object to, the participation of all the lawyers involved; and~~

~~(3) (iii) the aggregate fee does not violate paragraph (a);~~

~~(2) is made among attorneys formerly associated in practice pursuant to a separation or retirement agreement;~~

~~(3) is made among lawyers formerly associated in practice and relates to employment undertaken by one or more of those lawyers during their association.~~

~~(g) Paragraph (f) of this Rule does not prohibit payments to a former partner or associate pursuant to a separation or retirement agreement.~~

~~(f) A lawyer shall not enter into an arrangement for, charge, seek to collect, or collect:~~

~~(i) a contingent fee for representing a defendant in a criminal case;~~

(ii) a fee resulting from conduct violating paragraph (e) of this Rule;

(iii) a fee resulting from conduct violating Rule 7.03(a), (b), or (c);

(iv) a fee where the lawyer has accepted or continued employment in violation of Rule

7.06

[Proposed Final Draft]

**A. Amend TDRPC Rule 7.06**

**“RULE 7.06 PROHIBITED EMPLOYMENT**

(a) A lawyer shall not accept or continue employment in a matter when the lawyer knows or reasonably should know that employment was procured by conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9), engaged in by that lawyer personally or by any other person whom the lawyer ordered, encouraged, or knowingly permitted to engage in such conduct.

(b) A lawyer shall not accept or continue employment in a matter when the lawyer knows or reasonably should know that employment was procured by conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9), engaged in by any other person or entity that is a shareholder, partner, or member of, an associate in, or of counsel to that lawyer's firm, or by any other person whom any of the foregoing persons or entities ordered, encouraged, or knowingly permitted to engage in such conduct.

(c) A lawyer who has not violated paragraph (a) or (b) in accepting employment in a matter shall not continue employment in that matter once the lawyer knows or reasonably should know that the person procuring the lawyer's employment in the matter engaged in, or ordered, encouraged, or knowingly permitted another to engage in, conduct prohibited by any of Rules 7.01 through 7.05, 8.04(a)(2), or 8.04(a)(9) in connection with the matter, unless nothing of value is given thereafter in return for that employment—the person who seeks the lawyer's services does so as a result of conduct prohibited by these Rules.<sup>22</sup>

[Final Draft - Adopted May 1, 1997]

### **Rule 7.07 Filing Requirements for Public Advertisements and Written Solicitations**

(a) Except as provided in paragraph (d) of this Rule, a lawyer shall file with the ~~Lawyer Advertisement and Solicitation~~ Advertising Review Committee of the State Bar of Texas, either before or concurrently with no later than the mailing or sending of a written solicitation communication:

(1) a copy of the written solicitation communication being sent or to be sent to one or more prospective clients for the purpose of obtaining professional employment, together with a representative sample of the envelopes in which the communications are enclosed; and

(2) a completed lawyer advertising and written solicitation application form; and

(3) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be for the sole purpose of defraying the expense of enforcing the rules related to such solicitations.

(b) Except as provided in paragraph (d) of this Rule, a lawyer shall file with the ~~Lawyer Advertisement and Solicitation~~ Advertising Review Committee of the State Bar of Texas, either before or concurrently no later than the first dissemination of an advertisement in the public media, a copy of each of the lawyer's advertisements in the public media. The filing shall include:

(1) a copy of the advertisement in the form in which it appears or is or will appear upon dissemination be disseminated such as a videotape, an audiotape, a print copy, or a photograph of outdoor advertising;

(2) a production script of the advertisement setting forth all words used and describing in detail the actions, events, scenes, and background sounds used in such advertisement together with a listing of the names and addresses of persons portrayed or heard to speak, if the advertisement is in or will be in a form in which the advertised message is not fully revealed by a print copy or photograph;

(3) a statement of when and where the advertisement has been, is, or will be used; and

(4) a completed lawyer advertising and written solicitation application form; and

(5) a check or money order payable to the State Bar of Texas for the fee set by the Board of Directors. Such fee shall be for the sole purpose of defraying the expense of enforcing the rules related to such advertisements.

(c) A lawyer who desires to secure an advance advisory opinion, referred to as a request for pre-approval, concerning compliance of a contemplated written solicitation communication or advertisement may submit to the ~~Lawyer Advertisement and Solicitation~~ Advertising Review Committee, not less than thirty (30) days prior to the date of first dissemination, the material specified in paragraph (a) or (b) of this Rule, including the application form and required fee; provided however, it shall not be necessary to submit a videotape if the videotape has not then been prepared and the production script submitted reflects in detail and accurately the actions, events, scenes, and background sounds that will be depicted or contained on such videotapes, when prepared, as well as the narrative transcript of the verbal and printed portions of such advertisement. A lawyer who wishes to request a pre-approval of an advertisement in a telephone directory or similar publication for which the date of dissemination is preceded by a period of time during which the advertisement cannot be changed must submit to the Advertising Review Committee not less than thirty (30) days prior to

the change deadline of the publication, the material specified in paragraph (b) of this Rule. If a lawyer submits an advertisement or written solicitation communication for pre-approval, An advisory opinion of the Lawyer Advertising and Solicitation Review Committee a finding of noncompliance by the Advertising Review Committee is not binding in a disciplinary proceeding or disciplinary action but a finding of compliance is binding in favor of the submitting lawyer if the representations, statements, materials, facts and written assurances received in connection therewith are true and are not misleading. The finding of compliance constitutes admissible evidence if offered by a party.

(d) The filing requirements of paragraphs (a) and (b) do not extend to any of the following materials, provided those materials comply with Rule 7.02(a) through (c) and, where applicable Rule 7.04(a) through (c):

(1) an advertisement in the public media that contains only part or all of the following information, provided the information is not false or misleading:

(i) the name of the lawyer or firm and lawyers associated with the firm, with office addresses, telephone numbers, office and telephone service hours, telecopier numbers, and a designation of the profession such as "attorney", "lawyer", "law office", or "firm;"

(ii) the fields particular areas of law in which the lawyer or firm advertise specialization and specializes or possesses special competence required by Rule 7.04 (a) through (c);

(iii) the particular areas of law in which the lawyer or firm practices or concentrates or to which it limits its practice;

(iii)(iv) the date of admission of the lawyer or lawyers to the State Bar of Texas, to particular federal courts, and to the bars of other jurisdictions;

(iv)(v) technical and professional licenses granted by this state and other recognized licensing authorities;

(v)(vi) foreign language ability;

(vi) fields of law in which one or more lawyers are certified or designated, provided the statement of this information is in compliance with Rule 7.02(a) through (c);

(vii) identification of prepaid or group legal service plans in which the lawyer participates;

(viii) the acceptance or nonacceptance of credit cards;

(ix) any fee for initial consultation and fee schedule;

(x) that the lawyer or firm is a sponsor of a charitable, civic, or community program or event, or is a sponsor of a public service announcement;

(xi) any disclosure or statement required by these rules; and

(xii) any other information specified from time to time in orders promulgated by the Supreme Court of Texas;

(2) an advertisement in the public media that:

(i) identifies one or more lawyers or a firm as a contributor to a specified charity or as a sponsor of a specified charitable, community, or public interest program, activity, or event; and

(ii) contains no information about the lawyers or firm other than names of the lawyers or firm or both, location of the law offices, and the fact of the sponsorship or contribution;

(3) a listing or entry in a regularly published law list;

(4) an announcement card stating new or changed associations, new offices, or similar changes relating to a lawyer or firm, or a tombstone professional card;

(5) a newsletter mailed only to:

(i) existing or former clients;

- (ii) other lawyers or professionals; and or
- (iii) members of a nonprofit organization that meets the following conditions: the primary purposes of the organization do not include the rendition of legal services; the recommending, furnishing, paying for, or educating persons regarding legal services is incidental and reasonably related to the primary purposes of the organization; the organization does not derive a financial benefit from the rendition of legal services by a lawyer; and the person for whom the legal services are rendered, and not the organization, is recognized as the client of the lawyer who is recommended, furnished, or paid by the organization;
- (6) a written solicitation communication that is not motivated by or concerned with a particular past occurrence or event or a particular series of past occurrences or events, and also is not motivated by or concerned with the prospective client's specific existing legal problem of which the lawyer is aware;
- (7) a written solicitation communication if the lawyer's use of the communication to secure professional employment was not significantly motivated by a desire for, or by the possibility of obtaining, pecuniary gain; or
- (8) a written solicitation communication that is requested by the prospective client.
- (e) If requested by the Lawyer Advertisement and Solicitation Advertising Review Committee, a lawyer shall promptly submit information to substantiate statements or representations made or implied in any advertisement in the public media and/or written solicitation by which the lawyer seeks paid professional employment.